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TRUSTS *and* ESTATES

AUGUST 1959



INFLATION AND TRUST PLANNING
TRUST COMPANIES AND LAWYERS
OIL'S FUTURE IN ENERGY MARKET

TRUSTS and ESTATES

AUGUST 1959

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TRUSTS AND ESTATES is not to be considered as
endorsing the views advocated in signed articles.

Cover Picture . . . With this picture of Diamond Head we salute Hawaii, our 50th State, whose new status will probably be announced by Presidential Proclamation before this issue reaches our readers. Diamond Head is near the Waialae Shopping Center where Liberty House and Bishop Trust Company recently sponsored a Women's Finance Forum reported in this issue by Joseph Trachtman, who conducted it . . . Hawaiian Trust Company, oldest in the islands, was organized August 10, 1898, and in thirty years was managing property valued at over \$77,000,000. Trust company operations in the Islands are somewhat broader than on the mainland, with such activities as insurance underwriting and real estate management complementing traditional trust functions.

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TRUSTS FOR INDIANS

An Increasing Opportunity for Service

DURING THE LAST FEW YEARS THE Bureau of Indian Affairs in the Department of the Interior has turned increasingly to banks and trust companies of the country for help in solving financial problems of the American Indians. In this introductory work, which has necessarily been an educational process for both the Indians and the banks, Commissioner Glenn L. Emons, himself a former banker of Gallup, N. M., has had the aid of an informal committee consisting of Edwin P. Neilan of the Bank of Delaware, Wilmington, Del.; John W. Remington of Lincoln Rochester Trust Co., Rochester, N. Y.; and Richard G. Stockton of Wachovia Bank and Trust Co., Winston-Salem, N. C.

Much the largest and most complicated bank trust project worked out with the help of this committee is that designed to preserve the assets of withdrawing members of the Klamath tribe of Oregon, owners of one of the most valuable forests on the Pacific coast.

About 78% of the members chose to withdraw and thus obtain about \$60,000 each as their share of the divided assets.

Because many of the withdrawing members were minors, it early became evident that some means should be provided to protect them in the ownership of such large sums. After investigation, it was determined that corporate trusteeships would provide these minors (and other Klamath members needing financial guidance) with more protection and greater income than would a system of guardianship. Additional legislation was obtained from Congress authorizing the trusts.

In this operation the Secretary of the Interior, Fred A. Seaton, has acted as grantor, turning over the present and prospective estates of 911 Klamath members (minors, mental incompetents, those asking for trust protection, and others determined to be in need of assistance in managing their affairs) to 38 banks in 10 States. A model trust

ag to take the scattered trusts throughout the country was rendered by the committee.

As might be expected, two Portland, Ore., banks, the United States National and the First National, received the largest numbers of these individual trusts, 281 and 266 respectively. But because many Klamath members now live far from the reservation, banks throughout the West shared in the assignments. A few trusts were established with banks as far east as Chicago.

Where individually owned allotments of realty in Oregon were a part of the trust estate, only trustees authorized to manage realty in Oregon could serve and were therefore chosen, even though the beneficiary resided elsewhere. Where assets consisted only of funds, trustees in other States could be appointed. Parents and guardians were invited to name the bank desired to act as trustee for the children or wards. To the extent possible the Bureau honored these requests.

Under these trusts, disbursements of income and principal are to be made by the trustee as it deems advisable for the maintenance, care, welfare, support and education of the beneficiary and for the members of the fiduciary's family for whom it is legally responsible. The trustee is also authorized, within the limits of its judgment, to disburse money to assist the beneficiary to engage in a business, farming, or ranch operation, or to give the beneficiary experience in the management of moneys and properties. Although the life of these trusts is indefinite, it is specified that "at all times it shall be the objective to terminate the trusts and place the beneficiary in full and complete control of the trust assets as soon as his capacity to manage his own financial affairs in a prudent and business like manner is established." State laws will govern trustees' activities and state courts will hear appeals from their decisions.

The establishment of a management trust with a bank or trust company is contemplated to manage and operate the remaining assets of the Klamath tribe after 78% of its members have withdrawn their shares. This new trustee, yet to be appointed, will have full responsibility for the management of the remaining, undivided tribal property in consultation with representatives of the tribe, will operate the tribal timberlands on a sustained yield basis, and will determine the amounts and conditions of income payments to members. The proposed trust would last for the lives of the enrolled members of the tribe who

Seated: Jesse L. Kirk, Sr., Klamath Tribal Council member, rancher and local Indian leader, conferring with W. R. Bradshaw, trust officer at the Klamath Falls office U. S. National Bank, Portland, Ore. Mr. Kirk's two minor children have trusts established with the bank for their share of tribal moneys. Standing: Area Director Don C. Foster (r.) and Superintendent Elmo Miller (l.).



Termination of Federal trusteeship of this tribe began in 1954 by act of Congress. In simplest terms, this act gave the 2000-odd members the choice of withdrawing from the tribe with a pro rata share of the tribe's assets, or of remaining in the tribe and continuing to operate the forest collectively through a new corporation or other legal entity.

This article was prepared by the Bureau of Indian Affairs at the request of TRUSTS AND ESTATES.

agreement for the trusts, which will probably total at least \$55,000,000, was worked out by the committee, the Department and the major trust companies involved. The detailed task of negotiating and establishing the 911 trusts was actually performed by the Portland Area Office of the Bureau of Indian Affairs under a delegation of authority from Secretary Seaton. Assistance in locating trust companies will-

are beneficiaries of the trust, except that the beneficiaries may vote to terminate the trust at five-year intervals and in an emergency the trustee may call an election at any time.

A smaller trust arrangement has resulted from another act of Congress in 1954 determining Federal trusteeship of four Paiute bands in Utah. In 1957 all tribal assets of these Indians were transferred to a new trustee, the Walker Bank and Trust Co. of Salt Lake City. The trust agreement required the trustee to sell all tribal lands except those which a band might wish to divide among its members or to transfer to a corporation owned by its members. Subsurface or mineral rights to all land were transferred to the trustee to be held for 10 years before sale.

In addition to the Klamath and Paiute trusts, to the establishment of which the informal committee rendered important advisory services, Messrs. Neilan, Remington and Stockton have individually assisted the Bureau to a substantial extent in effecting solution of the land and management problems of the Nez Perce of Idaho, the Palm Springs Indians of California, and the Seminoles of Florida.

A few other Indian tribes which have recently come into money have established bank trusts largely on their own initiative. An example of these is a trust created in 1955 by the Jicarilla Apache tribe of New Mexico with the First National Bank of Albuquerque. The Jicarilla had been prospering through timber sales and income occasioned by the discovery of oil and gas in its lands. It is the custom to distribute in per capita shares at least part of such income to each member of the tribe, including children. In this case the Tribal Council, uncertain of the continuance of this income, believed that part of the funds due each child should be safeguarded for his future benefit. After consulting with their attorney, the Council concluded that a trust arrangement would best provide prudent and lucrative management of their children's funds.

The Jicarilla Tribal Council, acting as grantor under powers given it by the tribe's constitution, agreed with the bank, which became the trustee, to deliver one half of all minors' per capita payments to the trustee for safekeeping and investment. Although the funds delivered could be managed and invested as a common fund, the share of each tribal member was to be considered a separate trust. As the trust is of the open-end type, the grantor may add to

the accounts of previously listed beneficiaries or create new accounts for additional beneficiaries. When a minor becomes 18 years old he receives one-fourth of the amount accumulated to his credit, and another one-fourth at 19, 20, 21 so that upon his 21st birthday he receives all of the amount to his credit, including principal and interest, and his name is removed from the trust. Payments may be made, however, at any time to a beneficiary if the Tribal Council, as grantor, requests the trustee in writing to make the payment.

No beneficiary is permitted to deal directly with the trustee, all business being conducted between the Tribal Council and the trustee. The trustee has all rights of investment permitted fiduciaries under the laws of New Mexico, and its fees are in accordance with its published schedule of charges. Annual written accountings of the trust are required. The Council, as grantor, has the right to alter the trust without the consent of any fiduciary.

In 1956 the Jicarilla set up a second trust fund with the First National Bank of Albuquerque. This \$1,000,000 trust is called the Chester E. Faris Fund, in honor of a former, beloved superintendent of the Jicarilla reservation. Its income, and income only, is expended annually on college and school scholarships for members of the tribe selected by a committee of the tribe.

Although the primary purpose of all these group and individual trusts is to safeguard, manage, and, if possible, increase the assets of tribes and individual Indians, a definite, collateral purpose is to educate Indians in sound methods of property management. The bank proving to be most helpful to the Indian is the "teaching bank." Trustees, it is hoped, will not only manage individual and tribal estates wisely and conscientiously but will also develop in their beneficiaries a desire and an ability to manage their own affairs. The Indians, on their side, are learning about the services available to them from banks, and, as more of them acquire funds through mineral discoveries or through awards by the Indian Claims Commission, they are certain to seek such services increasingly.

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• Personal trust funds in state chartered trust institutions of Pennsylvania totaled \$5,401,189,512 as of June 10, representing a gain of nearly 9% over the corresponding month a year ago. Corporate trusts totaled \$5,377,361,082, showing a gain of 3%.



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